

C) REMARKS***Claim Rejections - 35 U.S.C. § 102***

The Examiner rejected claims 1-3, 6-10, and 20 as being anticipated by the Griffiths reference.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 1051, 1053 (Fed. Cir. 1987). Applicant respectfully submits that the Griffiths reference fails to meet this test.

While the device of the present invention combines safety glasses and hearing protection into one device by eliminating the need for an "over-the-head" strap (on the ear muffs) and replacing it with the glasses which themselves provide the spring tension holding the ear muffs in place, the Griffiths reference is directed to a device that uses *intermediate elements and structure* to support a sun visor 24 to earphones 18. Griffiths uses more conventional glasses with metal springs for tension. And even though Griffiths does not disclose the visor 24 as a device that is intended to protect the user's eyes from objects and the like, such is not the principal distinction of that device from the device of the present invention. The primary distinction is that the Griffiths reference discloses and claims an acoustic headpiece that includes a headband 12, the headband 12 being completely separate and apart from the visor 24. Attached to the headband 12 is an intermediate assembly that allows a "sun visor means" to be attached, not to the earphones, but to this separate member that attaches the earphones to one another. In the present invention, *the eye protective member itself is the headband used to attach*

the ear protective members together. The eye protective member is unitary in construction and is flexibly resilient to accomplish its intended purpose. And it is protective. This is a major advantage to the device of the present invention. See, in particular, Paragraphs 0018 and 0021 of the present invention. In U.S. Pat. No. 5,133,586 issued to Korny et al. ("the Korny reference"), which patent was cited by applicant in his Information Disclosure Statement, is the following statement recognizing the short-comings of prior art:

"There have been paper proposals for combining eye and hearing protection and in one early proposal a rigid spectacle frame has permanently hingedly connected arms incorporating spring means to bias the arms inwardly for the purpose of urging earcups carried by the ends of the arms into engagement with the head. This requires the arms to be rigid. The use of such spring means and fixedly connected arms is considered unsatisfactory and a recent paper proposal apparently aimed at overcoming problems with this earlier proposal proposes a one piece substantially U-shaped resilient and transparent frame which provides both eye protection, from a central part, and arms for the support of ear protectors mounted thereon. *In our view it is technically impossible to produce a safety spectacle which meets required impact resistance safety standards and desired optical performance from a one piece resilient frame, as the resilience required to hold the ear protection in place, to give required hearing attention performance, would give rise to stress in any integral lens part which would be detrimental to optical performance.*" (Col. 1, Lines 46-66 of the Korny reference; emphasis added)

It is precisely this problem that the present invention has overcome. It is respectfully submitted that the Griffiths reference¹ does not overcome this problem, let alone anticipate the solution to it. To the contrary, the Griffiths reference discloses two embodiments for the intermediate assembly identified above. The first embodiment, illustrated by Figs. 1-3, includes a split bolt 32, washers 38 and lock nuts 39, all of which are required to secure the sun visor to the headband. The second embodiment, illustrated by Figs. 4-6, includes a split bolt 50, a bolt head 52, lock washers 68, a second bolt 58 and a nut 66 to accomplish the same function. Clearly, each embodiment disclosed by Griffiths is substantially more complex than that disclosed by the present invention. Accordingly, and for this reason alone, it is respectfully submitted that Griffiths does not anticipate the invention of the current application.

Independent claims 1, 13 and 20 have also been amended to make them much more specific to the present invention and further distinguishable from the Griffiths reference. Those claims, and the claims that depend from them, are believed to be in position for prompt allowance.

Claim Rejection - 35 U.S.C. § 103

The Examiner also rejected claims 4, 5, 11, 12, 18, 19 and 21 as being unpatentable over Griffiths in view of Robrahn et al.

In order to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165

¹ Note also that the Korny reference was filed more than two years after the Griffiths reference was issued.

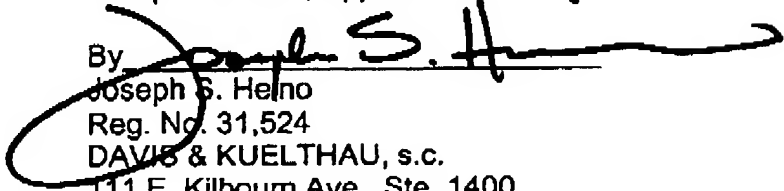
U.S.P.Q. 494, 496 (C.C.P.A. 1970). Applicant respectfully submits that one would not learn much about eye protective materials by reviewing what is fairly taught by Griffiths. Moreover, the device of the Griffiths reference is not intended to be used as some sort of deflector of particulate material and as a safety device in that regard. That is the primary function of the eye protector of the present invention. Griffiths discloses and claims a sun visor, nothing more.

While presented in much more technical detail that relates to acceptable wavelengths of light that may be permitted to pass through the goggle of the Robrahn et al. reference, that device suffers from the same shortcoming. It is claimed as a goggle that limits certain wavelengths of light from passing through it by virtue of "incorporating dye material to tint the plastic lens." See, e.g. claims 1, 7, 22 and 32. Claim 10 simply refers to a "tint." No claim is made to the physical durability or strength of the material. Nor is any claim made that the goggle be used as a unitary element that effectively eliminates the use of any separate headband with the device. The amended claims presented herein are specifically drawn to a protective safety device. They are also drawn to an eye protective element that eliminates the need to use a separate headband with the device. Accordingly, it is believed that all remaining claims are in position for allowance.

Conclusion

The amended claims now more particularly point out and claim the unique apparatus of the present invention which provides a novel combined use of the eye protective portion for eye protection and for attachment of the ear protective portion to the user's head. The applicant respectfully submits that this novel feature is not found in the prior art cited. Reconsideration and allowance of all claims now presented is respectfully requested.

Respectfully submitted,
Joseph A. Brhel, Applicant

By 
Joseph S. Helno
Reg. No. 31,524
DAVIS & KUELTHAU, s.c.
111 E. Kilbourn Ave., Ste. 1400
Milwaukee, WI 53202-1633
(414) 225-1452

Patrick M. Bergin
Reg. No. 54,994
DAVIS & KUELTHAU, s.c.
111 E. Kilbourn Ave., Ste. 1400
Milwaukee, WI 53202-1633
(414) 225-7563